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Supreme Court, U.S.
FILED
JAN
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No. 97 1122

In The
Supreme Court of the United States
October Term, 1997

*

ROBIN SMITH,
Petitioner,

v.

OREGON STATE BAR,
Respondent.

*

Petition For Writ of Certiorari
To the Oregon Supreme Court

*

PETITION FOR WRIT OF CERTIORARI

Appendix Part 1

*

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Telephone: (503)245-0258
Pro se

77 pp

PETITION FOR WRIT OF CERTIORARI

Appendix A

IN THE SUPREME COURT OF THE STATE OF OREGON

OREGON STATE BAR, a public corporation,) Washington
) County Circuit
Plaintiff-Respondent,) Court C940597CV
Respondent on Review,)
V) CA A89206
ROBIN S. SMITH) SC S44532

ORDER DENYING REVIEW

The Court has considered the petition for review and ORDERS that it be denied. Dated this 7th day of October 1997.

s/_____
Wallace P. Carson, Jr.
CHIEF JUSTICE

c: AllenReel
Stu Sugarman
Thomas J. Mack
Stephen B Mercer

PETITION FOR WRIT OF CERTIORARI

Appendix B

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON STATE BAR,
a public corporation, Respondent

v.

ROBIN SMITH, and PEOPLE'S PARALEGAL SERVICE, INC., Appelants
an Oregon corporation,

(C94-0597CV; CA A89206)

Appeal from Circuit Court, Washington County, Michael J. McElligott, Judge.

Thomas J. Mack, Washington, D.C., argued the cause for appellants.

Allen Reel argued the cause for respondent.

Before Deits, Chief Judge, Haselton, Judge, and Richardson, Senior Judge.

HASELTON, J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[X] Costs allowed, payable by: Appellants

MONEY JUDGMENT

Judgment #1

Creditor: OREGON STATE BAR

Debtor: ROBIN SMITH, and PEOPLE'S PARALEGAL SERVICE, INC.,

Costs: $ 302.50

Attorney fees: 15,993.75

TOTAL AMOUNT: $16,296.25

Interest: Simple, 9% per annum, from the date of this appellate judgment.

Appellate Judgment

Effective Date: December 5, 1997

PETITION FOR WRIT OF CERTIORARI

Appendix C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON STATE BAR,
a public corporation, Respondent

v.

ROBIN SMITH, and PEOPLE'S PARALEGAL SERVICE, INC., Appelants
an Oregon corporation,

(C94-0597CV; CA A89206)

Appeal from Circuit Court, Washington County, Michael J. McElligott, Judge.

Thomas J. Mack, Washington, D.C., argued the cause for appellants.

Allen Reel argued the cause for respondent.

Before Deits, Chief Judge, Haselton, Judge, and Richardson, Senior Judge.

HASELTON, J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing Party: Respondent

Cost allowed payable by Appellants

HASELTON, J.

Defendants, People's Paralegal Service, Inc., and its president, Robin Smith, appeal from a judgment declaring them to have engaged in activities that constitute the unauthorized practice of law, ORS 9.160, and enjoining them from those activities. ORS 9.166. They argue that the injunction violated rights of free expression under the Oregon Constitution, Article I, section 8, and due process under the First and Fourteenth Amendments to the United States Constitution. We affirm.

From 1987 until 1995, when the injunction issued, defendants operated a business providing "legal technician" services for a fee. The services included providing consumers[1] with various legal forms available to the public through such sources as Stevens Ness Publishing Company, NOLO PRESS, bankruptcy courts, and the Oregon State Bar, and advising them with respect to their individual legal concerns.[2] Defendants

1 We use the ambiguous, and perhaps infelicitous, term "consumers"--rather than "clients" or "customers" quite consciously. Either of the latter two terms implicitly decides the central question before us.

2 The trial court made specific findings regarding six different occasions when People's Paralegal advised consumers as to their specific legal problems on issues including service of

never attempted to represent consumers in court, nor did they sign any documents as attorneys. Moreover, People's Paralegal posted signs at its place of business advising consumers that its employees were not attorneys, and its intake sheets, which were signed by the consumers, included the following statement:

"WE ARE NOT ATTORNEYS. WE ARE LEGAL TECHNICIANS.OUR SERVICE PROVIDES PREPARATION OF THE PAPERS INCLUDING TYPING, NOTARY SERVICE, AND PROCEDURAL INFORMATION. * * * IF YOU REQUIRE LEGAL ADVICE PLEASE SEE AN ATTORNEY."

Nevertheless, defendants did provide legal advice to consumers, and some of those persons relied on defendants' advice in resolving their legal problems.

Plaintiff Oregon State Bar brought this action in April 1995, alleging that defendants were engaged in the unlawful practice of law under ORS 9.160 and seeking injunctive relief under ORS 9.166. 3 Defendants answered and asserted, inter alia,

3 process, persons entitled to notification and proper venue in guardianship proceedings, legal issues that arise in marital dissolution proceedings, such as property settlements, including obtaining a Qualified Domestic Relations Order, and child support, how to obtain legal custody of a child, and how to amend a complaint. In some of these cases, People's Paralegal's advice was incorrect and ultimately harmed the consumers.

ORS 9.160 provides:

affirmative defenses that ORS 9.160, either facially or as applied, violated rights of free expression under Article I, section 8, of the Oregon Constitution and also violated constitutional due process guarantees. The trial court disagreed and granted the injunction, which provided, in part:

> [Defendants] * * * are * * * enjoined from practicing law including:
>
> "1. Enjoined from any personal contact with any persons in the nature of consultation, explanation, recommendation, or advice regarding their legal matters.
>
> "2. Enjoined from meeting with any persons to discuss their individual facts and circumstance~ relating to their need or desire for legal forms, legal services or legal assistance.
>
> "3. Enjoined from obtaining information orally,
>
> "Except for the right reserved tb litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar."

ORS 9.166 provides, in part:

> "(1) If the [Board of Governers of the Oregon State Bar) has reason to believe that a person is practicing law without a license, the board may maintain a suit for injunctive relief in the name of the Oregon State Bar against any person violating ORS 9.160. The court shall enjoin any person violating ORS 9.160 from practicing law without a license."

in writing, or in any other manner relating to individual facts and circumstances so as to assist any persons with their legal matters.

"4. Enjoined from advising any persons regarding their eligibility for or advisability of legal remedies to address any person's particular legal matters.

"5. Enjoined from advising any persons regarding procedural functions of the court system as it relates to any person's particular legal matters including advice regarding jurisdiction or venue.

"6. Enjoined from assisting in selecting particular forms, documents or pleadings for any persons to address their legal matters.

"7. Enjoined from assisting in any way with the preparation or filling out of legal forms, or any parts of such forms, documents or pleadings for any persons.

"8. Enjoined from assisting, suggesting or advising any persons how forms, documents or pleadings should be used to address or to solve particular legal problems.

"9. Nothing included in this Judgment and Decree precludes Defendant Smith from working for someone authorized to practice law so long as she is acting within the course of her duties and under the direction and supervision of an individual authorized to practice law."

On appeal, defendants renew and reiterate their constitutional challenges to ORS 9.160, both on its face and as applied. We begin with defendants' free expression arguments under Article I, section 8. Article I, section 8, provides:

> "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

Defendants' principal argument is that, because the practice of law necessarily involves the "exchange of legal information," ORS 9.160 impermissibly prohibits, or impairs, constitutionally protected expression. Plaintiff responds that the statute does not explicitly refer to expression or to the content of expression. Rather, plaintiff argues, the statute is merely directed to regulating the practice of a profession, which, like many other professions, involves expression. Thus, plaintiff reasons, ORS 9.160 does not embody an impermissibly "content-driven" restriction of expression. Before addressing those arguments, it is useful--indeed, essential--to briefly review the history of the regulation of law practice in Oregon.

During territorial times and for the first 60 years of Oregon's statehood, restrictions on the practice of law were minimal. That relative lack of regulation appears to have been a product of post-Jacksonian and, later, populist hostility to a perceived professional elite. Barlow F. Christensen, The

Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors--or Even Good Sense?, 1980 Am B Foun Res J 159, 169-74. The restrictions that were imposed pertained solely to litigation practice- -that is, to qualifications to appear before courts and to sign pleadings. There were few, if any, restrictions on the rendition of general out-of-court legal advice.[5]

See Unauthorized Practice of Law at 172:

> "A product of frontier conditions, this egalitarian spirit, which held any man capable of doing anything, gave real impetus to the movement to open up the practice of law to any who might wish to pursue it, without regard to educational or other qualifications. As Pound put it, 'As to the law, the formative era is one of upbuilding. As to the profession, it is one of a vain struggle to maintain what had been achieved at the time of the Revolution.'" (Footnotes omitted.)

5 See Id. at 173-74:

> "Legislation in New Hampshire in 1842 provided that every citizen over 21 years of age might practice law, without any other qualifications. In 1843 legislation opened up the practice of law in Maine to every citizen, and a similar Wisconsin law of 1848 gave the privilege of law practice to every resident. A provision of the 1851 Indiana constitution extended to every voter the privilege of practicing law. As a practical matter, then, by the time of the Civil War there were no significant restrictions on admission to law practice.

The only pre-statehood regulation of law practice we have located is a rule that the Supreme Court of the Oregon Territory published in 1852, which addressed practice in that court:

"1. Attorneys and counsellors at law, and solicitors in chancery, of the several District Courts of this territory, shall on notice in open court, be admitted to practice in the Supreme Court; but all the preliminary steps necessary to bring a cause to this court, and prepare the same for trial, may be taken by any attorney, solicitor or counsellor of any of the District Courts." Rules Adopted at the Supreme Court of Oregon Territory (Dec:ember Term 19~2) -

In 1862, Oregon enacted legislation that provided that

* * * * *

"* * * Because the practice of law was open to virtually anyone, there was little cause for unauthorized practice; those who might otherwise have been unauthorized practitioners could now, with virtually no effort, be duly recognized as attorneys. And, under the permissive conditions that existed from the early nineteenth century until well after the Civil War, even those who might not have bothered to seek admission to law practice would have found little to inhibit their law practice activities." (Footnotes omitted.)

See also Commission on NonLaywer Practice, American Bar Association, NonLaywer Activity in Law-Related Situations 15 (1995) ("In the 19 new states admitted to the union between independence and 1860, the earliest colonial era model of an untrained and unregulated bar--even for appearance in court--was replicated.").

"no person shall be allowed to participate as an attorney or appear as counsel in any court of justice" unless admitted to practice by the State Supreme Court.[6] At the same time, the legislature enacted a statutory definition of "attorney":

"An attorney is a person authorized to appear for and represent a party, in the written proceedings in any action, suit or proceeding, in any stage thereof. An attorney, other than the one who represents the party in the written proceedings, may also appear for and represent a party in court, before a judicial officer, and then he is known, in the particular action, suit or proceeding, as counsel only, and his authority is limited to the matters that transpire in the court or before such officer at the time." General Laws of Oregon, ch 14, § 1000, p 397 (Civ Code) (Deady 1845-64).

The legislature also prescribed requirements for admission as an attorney[7] and codified a summary of attorneys' duties.[8]

6 General Laws of Oregon, ch 14, § 1002, p 398 (Civ Code) (Deady 1845-64).

"An applicant for admission as attorney must apply to the supreme court, and must show:

"1. That he is a citizen of the United States, and of this state, and of the age of twenty-one years, which proof may be 'made by his own affidavit;

"2. That he is a person of good moral character, which may be proved by any evidence satisfactory to the court;

"3. That he has the requisite learning and

ability, which must be shown by the examination of the applicant, by the judges, or under their direction, in open court, at the term at which the application is made." General Laws of Oregon, ch 14, § 1003, p 398-99 (Civ Code) (Deady 1845-64).

"It is the duty of an attorney:

"1. To support the constitution and laws of the United States, and of this state;

"2. To maintain the respect due to the courts of justice and judicial officers;

"3. To counsel or maintain such actions, suits or proceedings or defenses, only, as may appear to him legal and just, except the defense of a person charged with a public offence;

"4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the court or jury, by any artifice or false statement of law or fact;

"5. To maintain, inviolate, the confidence, and at every peril to himself, to preserve the secrets of his clients;

"6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party' or witness,,unless required by the justice of the cause with which he is charged;

"7. Not to encourage either the commencement or the continuance of an action, suit or proceeding, from any motives of passion or interest; and,

"8. Never to reject, for any consideration

In 1919, the legislature enacted Oregon's first statute addressing the unlawful practice of law:

"It shall be unlawful for any person, firm, association of persons or corporation to engage in the practice of law within the state of Oregon after the taking effect of this act, without first having been duly admitted and licensed as an attorney at law in the courts of this state." Oregon Laws 1920, ch V, § 1093-1, p 949 (Spec Sess) .9

The legislature concomitantly enacted a definition of the "practice of law":

> "Any person, firm, association of persons or corporation shall be regarded as engaging in the practice of law within the meaning of this act who shall undertake to represent or who shall represent parties litigant in courts of justice other than courts of justices of the peace, or district courts, or who shall, for a fee, prepare or undertake to prepare pleadings or other papers incident to actions, suits or special proceedings, or manage or undertake to manage such actions, suits or proceedings on behalf of clients before judges or courts, or in any manner act professionally in legal formalities, negotiations or proceedings, by warrant or authority of clients or otherwise[.]" Oregon Laws 1920, ch V, § 1093-2, p 949 (Spec Sess)

> personal to himself, the cause of the defenseless or the oppressed." General Laws of Oregon, ch 14, § 1006, p 399-400 (Civ Code) (Deady 1845-64).

Violation of that statute was a misdemeanor, which could be punished by a fine of not more than $100, imprisonment in the county jail for a period of not more than 90 days, or both. Oregon Laws 1920, ch V, § 1093-3, p 949 (Spec Sess)

That definition encompassed litigation practice, which was the focus of earlier definitions of "attorney," as well as broader matters of client representation, i.e., "act [mg] professionally in legal formalities, negotiations or proceedings by warrant or authority of clients or otherwise[.]" However, it did not refer to, much less purport to regulate, the rendition of general, nonlitigation-related advice.

In 1937, the legislature deleted the definition of the "practice of law" from the unlawful practice statutes. Or Laws 1937, ch 343, § 2. Thereafter, the law simply provided:

> "Reserving to litigants the rights * * * to prosecute or defend a cause in person, it shall be unlawful for any person to practice law or to represent himself as qualified to practice law after the taking effect of this act, unless he shall be an active member of the Oregon state bar * * *. Any person who is an active member of the Oregon state bar, * * * or who hereafter shall become such active member, hereby is authorized to engage in the practice of law." Or Laws 1937, ch 343, § 1.

That open-ended--and, arguably, amorphous-approach was characteristic of contemporaneous unauthorized practice statutes enacted in other jurisdictions. See The Unauthorized Practice of Law at 192. In Oregon, as in many other jurisdictions, the particularized definition of the "practice of law" was committed

to case-by-case development by the courts.

The first Oregon decision to address that question was State ex rel. Oregon State Bar v. John~ton, 158 Or 52, 74 P2d 395 (1937). In Johnston, a disbarred attorney was fined for continuing to practice law. The court noted that the defendant

> "continued to occupy an office in the city of Portland, on the door of which appeared a sign reading, 'Harold W. Johnston, Attorney at Law'; * * * accepted employment from one Frances Peecher to secure a divorce for her; prepared a complaint for her to sign; and procured another attorney to sign the complaint as attorney for plaintiff." Id.. at 53.

The defendant had also effected a compromise with a client's creditors. The court concluded: "It may be doubted whether effecting a compromise with creditors constitutes practicing law. The other transaction, however, did constitute practicing law[.]" Id.. at 54. Thus, although the "practice of law" circa 1937 clearly included appearing in court and drafting court documents, it was unsettled whether that concept encompassed engaging in out-of-court negotiations on a "client's" behalf[10] or other nonlitigation-based advice and activity.

Some of that uncertainty was dispelled in State Bar V.

As noted above, the repealed statutory definition of the "practice of law" expressly included such activities.

Security Escrows, Inc 233 Or 80, 377 P2d 334 (1962). There, an escrow company appealed from a judgment enjoining it, pursuant to ORS 9.166, from drafting a range of documents, including contracts, deeds, mortgages, satisfactions, leases, and options. In reviewing the injunction, the court identified the essence of the "practice of law," as being the informed application of legal principles to address a particular person's individual circumstances and needs:

"Turning * * * to the specific matter of documents vesting property rights, the exercise of discretion concerning property rights of another should be entrusted only to those learned in the law. There are, of course, matters in which persons who are not trained in the law can give perfectly sound business advice. However, when laymen select and prepare instruments creating rights in land for other members of the public there is always the danger that they may do the job badly. In the exceptional case the routine procedure may be grossly wrong. * * * We are justified in taking judicial notice of the fact that badly drawn instruments create not only needless litigation but needless loss and liability. A little of this mischief may flow from the carelessness of lawyers, but by far the most of it is the work product of laymen. In either case the injured party may have a cause of action for damages, but it is in the public interest to keep these difficulties to a minimum.

"* * * * *

"For the purposes of this case, we hold that the practice or law includes the drafting or selection of

> documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served. The knowledge of the customer's needs obviously cannot be had by one who has no knowledge of the relevant law. One must know what questions to ask. Accordingly any exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties, will bring the activity within the practice of the profession." Id.. at 87, 89 (some emphasis supplied).

Applying that analysis, the court sustained the injunction to the extent that it restrained the defendants' selection and preparation of documents where that conduct required "an intelligent choice between alternative methods, ' 233 Or at 91, but concluded that the injunction was overbroad to the extent that it barred the defendants from acting as "mere scriveners" who did nothing more than till in ~ocuments ~t ~1i~ii ~ubt~tner~ direction. Id. at 91-92.

In State Bar v Miller & Co., 235 Or 341, 385 P2d 181 (1963), the court affirmed an injunction against a nonlawyer who, as part of his insurance business, provided advice on estate planning. The court held that, when a client receives advice from a nonlawyer and the advice "involves the application of legal principles[,] [t]his constitutes the practice of law." Id.

at 344. The court further explained:

> "It must be conceded that frequently advice given in the course of carrying on a business is shaped by a knowledge of the applicable law. But the giving of such advice is not in every instance regarded as the practice of law. The legal ingredient in the advice may be so insubstantial as to call for the application of the principle of de minimis non curat lex. This is not to say that we adopt the view permitting the practice of law where the legal element is merely incidental to the business activity being carried on. To fall outside the proscription of the statute the legal element must not only be incidental, it must be insubstantial. It cannot be said that one who plans another person's estate employs the law only in an insubstantial way." Id. at 344-45 (footnote omitted).

The final, and most recent, pertinent "unauthorized practice" decision is Oregon State Bar v. Gilchrist, 272 Or 552, 538 P2d 913 (1975) There, the court held that the advertising and sale of generic, noncustomized do-it-yourself divorce kits did not, without more, constitute the practice of law:

> "We find persuasive the holding in New York County Lawyers' Association V. Dacey, 28 AD 2d 161, 283 NYS 2d 984, [rev 21 NY 2d 694 (1967)]. There it was held that the publication, distribution and selling of Norman F. Dacey's book 'How to Avoid Probate' did not constitute the practice of law since the publication was directed to the general public and not to a specific individual. The dissenting opinion in the Appellate Division, which was adopted by the Court of Appeals, stated in pertinent part:
>
> * * * It cannot be claimed that the

publication of a legal text which purports to say what the law is amounts to legal practice. And the mere fact that the principles or rules stated in the text may be accepted by a particular reader as a solution to his problem, does not affect this.
* * *

"'Dacey's book is sold to the public at large. There is no personal contact or relationship with a particular individual.

Nor does there exist that relation of confidence and trust so necessary to the status of attorney and client. This is the essential of leaal oractice--the representation and the advising of a particular person in a particular situation

"* * * * *

"We conclude that in the advertising and selling of their divorce kits the defendants are not engaged in the practice of law and may not be enjoined from engaging in that part of their business." 272 Or at 558-59, 563 (emphasis supplied)

Thus, the mere general dissemination of legal information by nonlawyers does not constitute the unauthorized practice of law. The court proceeded, however, to conclude that other, more personalized contact and advice was properly enjoined:

"(A] 11 personal contact between defendants and their customers in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms, or suggesting or advising how the forms should be used in solving the particular customer's marital problems does constitute the practice of law

and must be and is strictly enjoined." Id. at 563-64. There have been no notable ~ decisions amplifying or refining the meaning of "practice of law. "'~

> We cannot, and will not, purport to derive an omnibus

In Oregon State Bar v. Wright, 280 Or 693, 573 P2d 283 (1977) , the court generally affirmed an injunction restraining the non-lawyer defendant from providing in-court representation and litigation-related services that fell within the narrowest historically recognized concept of "practice of law." See ___ Or App at ___ (slip opinion at 8-11). In so holding, the court rejected the defendant's argument that ORS 9.160 was unconstitutionally vague (the defendant did not raise any free exercise challenge under Article I, section 8) and reiterated the statute ' 5 consumer-protective purpose:

> "[T]here is no 'right,' as a matter of 'free enterprise, ' to engage in many professions and occupations because of the provisions of statutes which provide that only persons who are properly qualified, accredited and licensed by a board or commission established by statute may engage in those professions and occupations. These include doctors, dentists, architects, engineers, accountants, real estate brokers, land surveyors, funeral establishments, auctioneers, barbers, plumbers, and many other professions and occupations.
>
> "* * * * *
>
> "The reason f6r the statutes relating to all of these professions and occupations is to protect the public from the consequences resulting from attempts to engage in such professions and occupations by persons who are not properly trained and qualified to do so." Id. at 697-98 (footnote omitted)

definition of "practice of law" from Johnston, Security Escrows, Miller, and Gilchrist. Indeed, Security Escrows cautions that a determination of unauthorized practice may depend on case-specific circumstances. 233 Or at 85-89. Nevertheless, regardless of any uncertainty at the margins, certain core criteria are well settled. Most significantly, for present purposes, the "practice of law" means the exercise of professional judgment in applying legal principles to address another person's individualized needs through analysis, advice, or other assistance.

We return, then, to defendants' arguments that ORS 9.160 violates Article I, section 8. In City of Eugene v Miller, 318 Or 480, 871 P2d 454 (1994), the court summarized the controlling analysis, enunciated in State v Robertson, 293 Or 402, 649 P2d 569 (1982), and State v. plowman, 314 Or 157, 838 P2d 558 (1992), cert den 508 US 974 (1993), which delineates three types of statutes implicating expression:

> "The first Robertson category consists of laws that 'focus on the content of speech or writing' or are '"written in terms directed to the substance of any 'opinion' or any 'sub~ect' of communication."' Laws within that category violate Article I. section 8, 'unless the scope of the restraint is wholly confined

> within some exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach.' The second Robertson category consists of laws that 'focus[] on forbidden effects, but expressly prohibit[] expression used to achieve those effects.' Laws in that category 'are analyzed for overbreadth.' Finally, the third Robertson category consists of laws that 'focus[] on forbidden effects, but without referring to expression at all.' Laws within the third category are analyzed to determine whether they violate Article I, section 8, as applied." City of Eugene, 318 Or at 488 (citations omitted; emphasis in original)

See also Fidangue v. Oregon Govt. Standards and Practices, 141 Or App 495, 500-501, 920 P2d 154, rev allowed 324 Cr 47 (1996) (summarizing methodology).

That analysis, as framed and applied by the Supreme Court and our court, assumes that all statutes must fall into one of the three enumerated categories, no matter how awkward the fit. The Robertson/Plowman taxonomy seems somewhat ill-suited in assessing the constitutionality of a general professional licensing and regulatory scheme, in that virtually every profession--eg, medicine, psychiatry, teaching, accounting--involves some element of expression, albeit in the context of the broader rendition of professional services. The same could be said of such licensed vocations as securities, insurance, or real

estate brokerage. Nevertheless, the Robertson/Plowman methodology purports to describe the applicable universe, and we proceed to apply it.

Defendants first argue that ORS 9.160 is facially unconstitutional, as falling within the first Robertson/Plowman category, because it burdens a type of expression, viz "out-of court legal speech," that did not fall within any historical exception recognized at the time of statehood. Whatever the merits of defendants' arguments about the historical status of nonlitigation-related speech, their argument fails in its first premise: CR5 9.160 is not "written in terms directed to the substance of any 'opinion' or any 'subject' of communication." Robertson, 293 Or at 412.

As noted in Gilchrist, CR5 9.160 does not proscribe the mere generalized exchange of legal information or discussion of legal issues. 272 Or at 558-59, 563. Rather, the statute is expressly directed to limiting the conduct of a profession--the practice of law--to those who possess certain qualifications. It cannot be gainsaid that some part of the practice of law involves expression--and, indeed, that expression is an indispensable

component of some aspects of legal practice. However, as described above, the practice of law involves conduct, processes, and relationships that transcend mere expression. In that respect, ORS 9.160 and the corollary legal licensing statutes are no different from other professional licensing and regulatory schemes. Defendants' analysis, if extended in principle, would compel the invalidation of many, and perhaps all, of those analogous statutes. ~, e.g., ORS 677.080; ORS 677.085 (prohibiting unauthorized practice of medicine); CRS 675.020 (prohibiting unauthorized practice of psychology); ORS 673.615 (prohibiting unauthorized practice of tax consulting). ORS 9.160 does not fall within the first Robertson/Plowman category.

The closer question is whether the statute is more properly consigned to the second Robertson/Plowman category, or to the third. ~, e.g., State v. Chakerian, 135 Or App 368, 373-75, 900 P2d 511, aff'd 325 Or 370, - P2d ___ (1997).

An initial difficulty with assigning the statute to either category is that both assume that the statute, either by its terms or by reference to context, "focuses on" some discrete "forbidden effect." Plowman, 314 Or at 164. See State v.

Stoneman, 323 Or 536, 546, 920 P2d 535 (1996) ("An examination of the context of a statute, as well as its wording, is necessary to an understanding of the policy that the legislative choice embodies." (Emphasis in original.)). The problem, however, is that, just as CR5 9.160 does not, by its terms, refer to "the substance of any 'opinion' or any 'subject' of communication," Robertson, 293 Or at 412, the statute also does not expressly refer to any targeted harmful effect of the unauthorized practice of law. Nor is the targeted harm obvious from statutory context, including particularly other laws pertaining to licensing and regulation of attorneys. ~, e.g., ORS 9.241 (regulating appearances in court by attorneys licensed in other jurisdictions) ; CR5 9.280 (regulating immigration consulting to members of Oregon State Bar); ORS 9.500 (prohibiting some forms of solicitation by attorneys)

To be sure, ORS 9.160 and other related statutes could reasonably be, and have been, viewed as consumer-protective measures. ~, e.g., Security Escrows; Miller. Conversely, those statutes could be read, just as plausibly and less benignly, as perpetuating a professional "monopoly." Our point

is not to give credence to the latter reading, and certainly not to take issue with the former. Our concern, rather, is that neither an examination of the unadorned "context of the statute [nor] of its wording" yields a clear "understanding of the policy that the legislative choice embodied." Stoneman, 323 Or at 536.12 It is tempting in such circumstances to carve out a fourth category, beyond the Robertson/plowman three, consisting of statutes that neither expressly prohibit expression nor are directed against some textually or contextually verifiable evil, but whose application may, nevertheless, collaterally burden expression. Unfortunately, the Prevailing methodology seems to foreclose that possibility.

So constrained, we consign CR5 9.160 to the third Robertson/plowman category. To fall within the second, a statute must "expressly prohibit expression." Plowman, 314 Or at 164. See Stoneman, 323 Or at 543 ("If such a statute expressly prohibits certain forms of expression, it must survive an

12 It is unclear what role, if any, general judicial discussions of a statute's purposes, e.g., Security Escrows; Wright, play in contextual inquiry, which, at least in Stoneman, referred exclusively to the text and structure of related statutes.

overbreadth challenge [.]") . In Chakerian, we considered the content of that requirement:

"[W]hat does it mean that a statute 'expressly prohibits expression'?

> "We perceive in Robertson's progeny two classes of statutes that fall within the second Robertson category. The first includes statutes that explicitly identify communicative conduct as a proscribed means of achieving a forbidden effect. * * *

"The second class of statutes is less obvious. It includes statues that, although they do not explicitly refer to communicative conduct, can be violated only by means of expression. In other words, regardless of the statute's particular language, a person cannot violate the statute without engaging in communicative conduct. That class acknowledges the dictates of substance over form. Regardless of the precision- -or, perhaps the studied imprecision--of statutory language, when expression is the only possible means of violating the statute, the statute, necessarily, expressly proscribes expression." 135 Or App at 375 (emphasis in original; footnote omitted).

Here, as noted, CR5 9.160 does not "explicitly identify communicative conduct as a proscribed means of achieving a forbidden effect." 135 Or App at 375. The statute does not explicitly refer to expression at all.

Nor can CR5 9.160 be "violated only by means of expression." Chakerian, 135 Or App at 375. (emphasis in original) . Our conclusion in that regard flows from the essence

of the "practice of law"--and, thus, of the unauthorized practice of law--described above. That essential element is the rendition of legal services that required the exercise of informed discretion in applying legal principles to address a particular "client's" individual needs. ___ Or App at (slip opinion at 18). Some of those services are intrinsically communicative or expressive eg, advice, negotiation, or drafting. But others, for which attorneys routinely bill their clients, are not--including, most significantly, research and analysis. Indeed, even advice, negotiation, and drafting, are only the final, articulated products of the skills and processes that form the core of the lawyer's craft, the exercise of professional judgment. In a related sense, the consumer-protective policies that underlie ORS 9.160 may ~e offended not merely by what is expressed, but also by what is not--by advice not given and by actions not taken. Because CR5 9.160 can be violated by means other than expression, it falls, albeit somewhat unsatisfactorily, into the third Robertson/Plowman category.

Statutes in the third category "are analyzed to determine whether they violate Article I, section 8, as applied."

Miller, 318 Or at 488. Such statutes "are subject to challenge * * * on vagueness grounds or on the ground that the statute's reach, as applied to defendant, extends to privileged expression." Stoneman, 323 Or at 543. In Creaon State Bar v Wright, 280 Or 693, 700-701, 573 P2d 282 (1977), the court concluded that ORS 9.160 was not unconstitutionally vague for purposes of the Fourteenth Amendment to the United States Constitution, and plaintiff here advances no persuasive reason for reaching a different conclusion under Article I, section 8. Nor was the statute's application to defendant's activities impermissibly overbroad. The injunction, issued pursuant to

> 9.160 and CR5 9.166, carefully limits the breadth of its prohibition to conduct, including communication, that pertains to representing and counseling persons with regard to their particular legal matters. Such a prohibition does not impermissibly burden protected expression for purposes of Article I, section 8.

Defendants' second assignment of error asserts, primarily, that the injunction itself is overbroad under the First and Fourteenth Amendments to the United States

Constitution. Defendants argue:

"The trial court's injunction banned Ms. Smith from all law practice including all forms of federal and state sanctioned nonlawyer law practice. In doing so, the trial court's injunction order violates Ms. Smith's rights to free speech and association guaranteed by the First and Fourteenth Amendments * * , as well as by the Oregon Constitution.

"* * * * *

> "In short, while certain areas of law practice are proscribed, large areas of nonlawyer practice are state and federally sanctioned. Yet the trial court's injunction prospectively bans Ms. Smith and her company from all forms of law practice, whether authorized or not. State and federally sanctioned legal advice is educational speech and cannot be banned absent a compelling state interest and means narrowly tailored to further the state's interest while protecting the speakers right to speak freely."

That argument fails. As we have explained, the injunction does not ban speech qua speech; it restrains speech in the context of a putatively professional relationship. As significantly, defendants have not demonstrated that they actually engage in practices within the supposed areas of overbreadth.[13] Finally, and in all events, defendants' argument

[13] We note particularly that plaintiffs' "applied" arguments, as briefed, do not challenge the validity of paragraph 7 of the injunction, see ___ Or App at ___ (slip opinion at 4) as applied to their practices and operations. Compare, eg, Security Escrows, 233 Or at 91-93.

assumes, without apt authority or analysis, that the First Amendment somehow generally preempts state law-based restraints on unauthorized legal practice of law. The only authority defendants invoke, United Transportation Union v. State Bar of Michigan, 401 US 576, 91 5 Ct 1076, 28 L Ed 2d 339 (1971) , and Brotherhood of Railway Trainmen v. Virginia, 377 US 1, 84 5 Ct 1113, 12 L Ed 2d 89 (1964) , involved injunctions actually burdening the continuing exercise of rights of labor organization and representation. Here, defendants have not shown any such impairment.[14]

14 We have found no cases expressing a general federal disapproval of state law-based restrictions on the unauthorized practice of law. See for example, Thomas v. Collins, 323 US 516, 544-45, 65 5 Ct 315, 89 L Ed 430 (1945) (Jackson, J., concurring)

> "A state may forbid one without its license to practice law as a vocation, but I think it could not stop an unlicensed person from making a speech about the rights of man or the rights of labor, or any other kind of right, including recommending that his hearers organize to support his views. Likewise, the state may prohibit the pursuit of medicine as an occupation without its license but I do not think it could make it a crime publicly or privately to speak urging persons to follow or reject any school of medical thought. * * *
>
> "This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state

We reject defendants' remaining arguments without further discussion.

Affirmed.

> is empowered to protect. The modern state owes and attempts to perform a duty to pro~ect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system."

PETITION FOR WRIT OF CERTIORARI

Appendix D

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

OREGON STATE BAR, Plaintiff v. ROBIN S. SMITH and PEOPLE'S PARALEGAL SERVICE, INC. Defendants.	) C940597CV))) FINDINGS OF FACT) AND CONCLUSIONS) OF LAW)

The court makes the following FINDINGS OF FACT:

1. The Oregon State Bar, which was created by the State Bar Act, ORS 9.001 et seq, is a public corporation and an instrumentality of the Judicial Department.

2. The Oregon State Bar at all times relevant was authorized to carry out the provisions of Chapter 9 of the Oregon Revised Statutes relating to the unlawful practice of law, including maintaining a suit for injunctive relief.

3. Defendants were and are engaged in business in the State of Oregon with a principal place of business in Washington County.

4. Defendants are not attorneys nor members of the Oregon State Bar.

5. Plaintiff first mailed a copy of the complaint in this case to the Oregon Attorney General on April 19, 1995. Receipt was acknowledged.

6. People's Paralegal Service began business approximately July 1987. At all relevant times, Defendant Robin Smith was the President of People's Paralegal and its employee.

7. At all relevant times the intake sheet which were signed by customers of People's Paralegal included:

WE ARE NOT ATTORNEYS. WE ARE LEGAL TECHNICIANS. OUR SERVICE PROVIDES PREPARATION OF THE PAPERS INCLUDING TYPING, NOTARY SERVICE, AND PROCEDURAL INFORMATION* IF YOU REQUIRE LEGAL ADVICE PLEASE SEE AN ATTORNEY. (Ex. 1)**

8. At all relevant times signs posted in the offices of People's Paralegal declared employees of People's Paralegal are not attorneys.

9. Since July, 1987, People's Paralegal Service, Inc. has provided services to approximately 9,000 customers.

10. The average fee collected by Defendants is $165 to $175.

11. Forms used by Defendants in their business are obtained through various sources available to the public, such as Stevens Ness Publishing Company, NOLO PRESS (a vendor of self-help law books and software), courthouses, banicruptey courts, and various Oregon State Bar Continuing Legal Education texts.

12. Defendant Smith founded the Oregon Legal Technicians Association (OLTA) in January, 1991. OLTA has actively lobbied for licensing of legal technicians, and Defendant Smith has been an active lobbyist during Oregon Legislative Sessions for this proposed legislation and has given testimony before legislative committees.

13. Defendant Smith provided written and oral testimony to the 1991 Oregon State Bar Unlawflil Practice of Law Task Force.

14. In 1992, the Oregon State Bar Bulletin published an article written by Defendant Smith concerning legal technicians.

15. Defendants have been vocal and open proponents for the licensure of legal technicians, and for change to ORs 9.160 ~ seq to permit Defendants and others to provide legal services to the public without violating said statutes.

16. Defendant Smith was contacted three times by people who identified themsselves as being representatives of the Oregon State Bar concerning alleged unauthorized practice of law (UPL). The initial contact was shortly after People's Paralegal Service, Inc. started business. The last contact was after Defendant Smith testified on November 19, 1992, in St. v. Gifford.

17. Sue Gifford desired legal services to obtain guardianship over her elderly father who was suffering from Alzheimers and was confined to a nursing home.

18. Gifford contacted corporate Defendant and corporate Defendant met with Gifford and discussed her legal matter.

19. Corporate Defendant questioned Gifford about the individual facts and circumstances involved in her case.

20. Corporate Defendant analyzed Gifford's situation and advised her regarding the filing
of a petition to gain guardianship over her father.

21 Corporate Defendant selected and provided forms to obtain guardianship including a Petition for Appointment of Guardian, Affidavit of Proof of Mailing or Delivery of Notice of Hearing, and Order Appointing visitor.

22. Corporate Defendant drafted, prepared and completed the forms.

23. Corporate Defendant advised Gifford about various terms including the definition of a ward, the financial resources to be listed, and the persons entitled to notification.

24. Corporate Defendant discussed with and explained to Gifford legal procedures including the procedure for service by publication, the filing process, and the visitor's investigation.

25. Corporate Defendant undertook to advise Gifford regarding the response to inquiries made by the Court as to the appointment of the visitor, the proper venue for the matter, and the residence of the ward.

26. Corporate Defendant prepared for Gifford's signature a letter addessing those matters.

27. Corporate Defendant filed the guardianship pleadings for Gifford.

28. Corporate Defendant charged Gifford for its services and collected fees from Gifford.

29. Gifford did not know how to proceed with obtaing guardianship and relied on the advice of Corporate Defendant.

30. The Oregon State Bar first discovered Corporate Defendant's conduct on April 7,
1993, when Glenn Leier, Chair of the Legal Assistants Joint Counsel, contacted the Bar about the Gifford matter.

31. The third member of the Oregon State Bar who contacted Defendant Smith was Jeffery Sapiro, the Bar's Disciplinary Counsel. Defendant Smith invited Mr Sapiro to her

office in January, 1992. Approximately one week before this meeting. Mr Sapiro told the Chairperion of the UPL Commrttee, Thomas Christ, he would be meeting with Ms. Smith, the President of the OLTA, to determine whether discussions concerning the lawftul extent of her activities would be fruitful. Mr. Sapiro advised Mr. Christ, as far as he could determine, neither the Bar nor the Department of Justice had received any UPL complaints against Ms. Smith in nearly three years, and if there was disagreement between Defendants' view of UPL and the Bar's views, then a declaratory judgment might be filed. (Ex. 109)

32 Ms. Smith was candid with Mr. Sapiro during their January, 1992, meeting. At no me did Mr Sapiro tell Ms. Smith Defendants would be sued for engaging in the unauthorized 'actice of law unless she stopped her current business practices.

33. The Oregon State Bar never sent Defendants an admonition letter, never sought pre'it resolution by agreement, nor any other form of discretionary resolution of any UPL complaint "inst Defendants before this suit was commenced by the Bar in June, 1994. Doing so would have been fruitless because Defendant Smith truly believes she is a person with a cause. She will not desist short of being ordered to do so.

34. The Board of Governors(BOG) initially approved filing an injunctive suit against defendants on April 29, 1989, in UPL case 13-87. (Ex. 102)

35 Plaintiff hired a private investigator to assist in the investigation of the 13-87 claim. his was the first time the Bar had used a private investigator for such a puruose.

36. On October 1, 1991, the BOG unanimously directed the Disciplinary Counsel to enter to a dialogue with Defendant Smith regarding what the law allows or prohibits a nonl-awyer to do, and if an agreement could not be reached, the matter would be referred back to the Board to insider whether a declaratory or injunctive relief was appropriate.

37. After Mr. Sapiro met with Ms. Smith in January, 1992, he told the BOG Ms. Smith as careful to disclose to her customers she was not an attorney and could not give legal advice. Mr. Sapiro also advised the BOG Ms. Smith had been made aware the courts have defined the practice of law more broadly than she does, but she believed such a view denies affordable legal services to many people. The BOG was also told Defendant Smith had been particularly active in lobbying for a legal technician licensure statute. (Ex. 111)

38. In May, 1992, the Board of Governors reviewed UPL cases pending against defendant Smith. The Board noted she did not feel she was in violation of the law, but the Bar's UPL Committee did. The BOG also noted the case was poorly suited for litigation because of its age and because no victtims had filed complaints. The

46. On December 6, 1993, Assistant Attorney General Lynn Rosik wrote an opinion to Robin Zelmer, Notary Public Complaints Investigator, concerning Mr. Somers' complaint and suggestion Defendant's conduct should lead to a revocation of Ms. Smith's Notary Commission. (Ex. 125)

47. At the March 11-12, 1994, BOG meeting the Board reviewed Defendant Smith's history with the UPL Committee and her role as an outspoken advocate of the independent paralegal or legal technician movement. After discussing the pros and cons of the matter at length, the Board voted, 9-5-1, to file injunctive suit to enjoin Defendants. (Ex. 136)

48. Holly Guardino needed legal services to transfer guardianship of her disabled brother from her mother to herself

49. The legal matter involving Guardiho included issues of venue, substitution of guardian, and notification.

50. Guardino contacted Defendants for assistance.

51. Guardino met with Robin Smith and disussed the individual facts and circumstances involved in her case.

52. On the initial consultation, Robin Smith asked Holly Guardino questions regarding the individual facts and circumstances involved in her legal matter.

53. Guardino told Smith that her mother was presently guardian for her brother and that they wanted to change the guardianship to Holly Guardino.

54. The existing guardianhhip was filed in Coos County where the ward resided befbre moving to Josephine County.

55. Holly Guardino resided in Washington County.

56. Guardino had no prcference as to where the guardianship would bc located.

57. Smith interviewed Guardino and wrote down on a questionnaire various facts and circumstances regarding Guardino's legal matter.

58. Defendants analyzed the facts and circumstances and advised Guardino to file for guardianship in Washington County.

59. Guardino had no idea what to do and relied upon Smith's advice.

60. Defendants selected the forms and provided the forms to have Holly Goardino appointed as guardian for her brother.

61. The forms included a Petition for Appointment of Guardian of Incapacitated Person and Waivers of Notice of Hearing on Petition for Appointment of Guardianship and Consent to Appointment.

62. Defendants drafted, prepared and completed the forms for Guardino.

63. Defendants listed Guardino's siblings as the persons entitled to notice in accordance withORS 126.127.

64. Defendants did not list the ward or the mother who was the current guardian as entitled to notice.

65. The ward and the current guardian are entitled to notice under Oregon law.

66. Defendants determined that the guardianship pleadings would be filed in Washington County Circuit Court, Probate Department.

67. The proper procedure was to file a motion in Coos County Circuit Court to transfer the guardianship to Josephine County and then to file a request to appoint a new guardian.

68. Defendants undertook to explain procedures to Guardino.

69. Defendants explained that the Court visitor from Washington County would go to Grants Pass to interview the ward.

70. Washington County notified Guardino that proper procedures were not being followed.

71. Guardino then retained Attorney Jeffrey W. Bellis to represent her.

72. Jeffrey W. Bellis wrote to Robin Smith and People's Paralegal on September 16, 1993, to advise them of the problem and to demand a reftuid of the fees paid by Guardino.

73. A copy of his letter was sent to the Probate Commissioner in Washington County and to the Oregon State Bar.

74. Guardino paid Defendants S199.25 for their services. It was returned.

75. Steven and Maurine Kalleck required legal services in order to dissolve their marriage.

76. Numerous issues were involved in their divorce including the division of pensions and retirement plans, the payment of support, wage withholding, children, property division and medical and dental coverage.

77. Steven Kalleck consulted with Defendants for legal assistance in obtaining a divorce.

78. Both Mr. and Mrs. Kalleck met with Defendants and discussed the facts and circumstances of their case.

79. Defendants analyzed the Kalleck's situation and advised them regarding procedures to be followed to obtain a divorce.

80. Defendants selected and provided the pleading forms for the Kallecks for the divorce.

81. Defendants drafted, and prepared various forms including a Property SettlementAgreement, a Decree of Dissolution of Marriage and Judgment, a Child Support Rebuttal, a Support Guideline Calculation, a Support Order Abstract, an Order Waiving Remainder of the

90-day Waiting Period, a Motion for Waiver of 90-day Waiting Period, an Affidavit Requesting Waiver of 90-day Waiting Period, Petitioner's Affidavit, Motion and Order for Def~t Decree of Dissolution, an Affidavit Supporting Decree of Dissolution Without a Hearing, and a Notice of Immediate Income Withholding and Option to Elect Form.

82. Defendants also prepared a Stipulated Qualified Domestic Relations Order under the Retirement Equity Act of 1984 (six pages) together with a Notice to Participant and Alternate Payee.

83. QUADRO Orders arc highly -acialiced legal documents and most domestic relations attorneys seek advice and assistance from a speciapst in order to prepare such orders.

84. Defendants inquired of the pension fizzid administrators regarding the pensions involved in the Kalleck divorce and obtained information used to prepare the QUADRO.

85. Defendants assisted the Kailecks in preparing a child support rebuttal.

86. Defendant Smith advised the Kallecks regarding the terms and provisions which should be stated in the child support rebuttal.

87. The Kallecks paid Defendants fees of at least $600.00.

88. Sheri Bolam sought legal services regarding the custody of her daughter.

89. Her daughter was born outof-wedlock in Arizona and the actual father had not been determined.

90. An Arizona citizen who might have been the father had previously threatened Bolam and the child.

91. Bolam had moved from Arizona and had been living in Oregon for about a year before she sought legal services.

92. Bolam consulted with Defendants regarding what should be done.

93. Defendants undertook to question Bolam about the individual facts and circumstances of her case.

94. Defendants undertook to analyze Bolam's legal situation and to determine her legal needs.

95. Defendants advised Bolam to file a petition for legal custody.

96. Defendants selected and provided the forms to be used regarding this custody matter.

97. Bolam relied upon the advice of Defendants in proceeding with filing a petition for legal custody.

98. Defendants drafted, prepared and provided forms including a Petition for Custody, Support and Visitation, an Affidavit, Motion and order for Default Decree, a Decree for Custody Support and Visitation, a Child Support Rebuttal, a Support Guideline Worksheet, an Affidavit and Motion for Decree Without a Hearing, a Support order Abstract, an Affidavit of Proof of Service and Summons for Domestic Relations.

99. Defendant stated in the Petition that paternity is not at issue, contrary to Bolam's statements.

100. Defendant Smith undertook to explain the term to Bolain and lead her to believe that the statement was legally necessary and correct.

101. The statement regarding paternity was subsequently changed by use of a different typewriter after Bolam had signed the petition and after it had been notarized, but without her knowledge.

102. Defendants arranged for the service of the pleadings upon Respondent in Arizona.

103. Respondent appeared, contested the matter, sought visitation and obtained visitation contrary to the desires of Bolam.

104. Both parties obtained attorneys to represent them in this matter.

105. Amy Elliott, Attorney at Law, represented Bolam and on August 5, 1994, wrote a letter of complaint to the Oregon State Bar (Unlawfiil Practice of Law Department) on behalf of Sheri Bolam.

106. Bolam paid fees to Defendants for their services.

107. Mr. and Mrs. Leonard needed legal services for the dissolution of their marriage.

108. Several issues were involve including property division, custody of children, visitation and support.

109. Mrs. Leonard consulted with Defendants to obtain assistance in dissolving the marriage.

110. Defendants met with both Mr. and Mrs. Leonard and asked them questions.

111. Defendants discussed the individual facts and circumstances involved in the marriage of Mr. and Mrs. Leonard.

112. Defendants analyzed the legal needs of Mr. and Mrs. Leonard dissolution of their marriage.

113. Defendants determined the procedures to be followed to obtain a dissolution.

114. Defendants selected and provided various legal forms and pleadings including a Decree of Dissolution of Marriage and judgment, a Support Order Abstract, a Certificate of Residency, a Petition for Dissolution of Marriage, an Affidavit Application for Decree, an Affidavit Requesting Waiver of 9O-day Waiting Period, a Motion for Waleer of 90-day Waiting Period.

115. Defendants drafted, prepared and completed these forms.

116. Defendants undertook to discuss and explain the terms and provisions and legal significance of these forms with Mr. and Mrs. Leonard.

117. Robin Smith assisted Annie Saltman in preparing a legal malpractice case against Henry Kane based upon an underlying medical malpractice case.

118. Defendant Robin Smith advised and assisted Annie Saltman in amending a complaint from a differeni case so that Ms. Sailman could file it against Mr. Kane.

119. Defendants research the law so that they may advise customers.

120. Defendants used the research to advise a customer regarding the transfer of a trusteeship in Oklahoma.

121. Defendants explained to customers A/B Trusts.

122. Defendants advise customers who want to file probate that they need not do so in certain circumstances.

123. Defendants advise customers that an Affidavit of Attesting Witnesses is necessary for the court to accept a Willl in probate.

124. Defendants select deed forms for customers based upon what Defendants believe the "court requires."

125. Defendants discuss the advantages and disadvantages of living trusts with customers.

126. Defendants explain to customers what debts can and cannot be dischged in Chapter 7 bankruptcy.

127. Defendants tell customers that CSD has to be notified in adoptions.

128. Defendants explain homestead exemptions to customers interested in bankruptcy.

129. Defendants copy Statutes and case law and provide them to customers for their individual circumstances.

130. Defendants explain to customers the differences between preparing a new will and doing a codicil.

131. Defendants inform customers that assets have to be transferred in order to make a living trust effective.

132. Defendants advise customers regarding the proper jurisdiction for litigation including the jurisdictional amounts for District and Circuit Courts.

133. Defendants provide legal services to customers in various areas including adoptions, bankruptcies, incorporations, expungements, domestic relations, name changes, guardianships, conservatorships, wills, powers of attorney, health are forms, living trusts, deeds, probate proceedings and general litigation.

134. Robin Smith has an associates degree as a legal assistant from Portland State University.

135. People who buy kits from Defendants oftentimes come back to discuss forms and procedures.

136. Defendants explain forms and procedures to persons who have purchased kits.

137. Defendants furnish other forms for such purchasers or prepare new forms selected by Defendants for such persons.

138. Customers often have questions after forms have been prepared.

139. Defendants undertake to answer customers' questions.

140. Defendant Smith shares her knowledge of the law and of legal procedures with her ustomers.

141. Defendants determine proper venue or place of filing for customers.

142. Defendants determine proper service requirements for some customers.

143. Defendants try to take control of the initial conversation with customers, rather than allowing customers to state what services they desire and what information should be used in their particular legal matter.

144. The Oregon State Board of Governors authorized the filing of this suit against Defendants after notification of the Gifford matter.

145. The Board of Governors voted to seek to enjoin Defendants from the unlawfiil practice of law based upon the f~cts and circumstances involved in the Gifford matter.

146. The Gifford matter was investigated by the UPL Comniittee of the Oregon State Bar.

147. The UPL Committee recommended to the Board of Governors that this suit be filed to enjoin Defendants from the unlawfiil practice of law.

148. The Oregon State Bar has rules and procedures for the investigation and prosecution of UPL matters.

149. The Oregon State Bar followed its rules and procedures for the investigation and filing of this matter.

150. This suit for injunctive relief was filed by the Oregon State Bar in less thantwo years from April 7, 1993, when the Bar was first notified of the Gifford matter.

151. The Guardino, Kalleck, Bolam, and Leonard matters all arose within two years of the filing of this suit.

152. The Oregon State Bar did not file this suit due to any exercise of Defendant's right to freedom of speech.

153. The Oregon State Bar has not filed this suit or maintained this litigation against Defendants due to any invidious disciiminatory reason or due to Defendants' vocal participation in

any effort to license paralegals or due to Defendants' lobbying the legislature or seeking the passage of an initiative.

154. The Oregon State Bar has not singled out Defendants for injunctive litigation while others simlarly situated have been ignored.

155. Defendants have been on notice since at least January, 1992, that the Oregon State Bar considered Defendants' activities to constitute the unlawfbl practice of law.

156. Defendants have not changed theirpractices in their business substantially since January, 1992.

157. The Oregon State Bar did not hold off maintaining this injunctive suit against Defendants to gain an advantage over Defendants.

158. The Oregon State Bar at times notifies other agencies and courts regarding complaints against persons allege to be engaged in the unlawfiai practice of law.

159. The rules and procedures for the processing of UPL matters contemplate notification of other agencies.

160. The Oregon State Bar did not follow through with a prior suit against Defendants because the matters became stale.

161. The Oregon State Bar never advised Defendants or led Defendants to believe that their conduct was not the practice of law.

162. The Oregon State Bar has rules and standards for the disposition of cases.

163. The Oregon State Bar followed its rules and standards regarding the disposition of the cases against these Defendants.

164. The Oregon State Bar did not file or maintain this suit against Defendants based upon such factors as race, religion, color, creed, national origin, exercise of constitutional rights, or similar invidious reasons.

165. Defendants are practicing law unlawlllly in Oregon and unless enjoined, will continue to do so.

166. Generally, complaints of UPL come to the Bar's Disciplinary Counsel's office. That office decides whether to recommend those claims be reviewed by the UPL Committee. Claims referred to the UPL Committee from 1989 to 1994, range

from a low of thirty-three (1989) to a high of sixty-seven (1992). Some claims are dismissed, some claims are resolved by letters of admonitions, and other claims are resolved by cease and desist letter agreements. The percentage of claims which were sent to the Board of Governors by the UPL Committee requesing prosecution from 1989 to 1994 range from four to six percent of the total claims presented to the UPL Committee. (Ex. 154)

167. From 1989 to April 27, 1995, ten lawsuits were filed or contempt proceedings were instituted by the Oregon State Bar for UPL. (The Board of Governors has authorized a lawsuit against Diana Nelson, but no suit had been filed at time of trial.) Of the ten lawsuits pending during this time frame, four were resolved by stipulated injunctions; at the time of trial in this case, another case had a stipulated injunction pending. In three of the other cases, stipulated injunctions had earlier been entered which subsequently led to contempt proceedings. The only case which acally went to trial, from 1989 to April, 1995, for injunctive relief is this case. (Ex. 8)

168. The only person, other than Defendants, identified by any of Plaintiff's witnesses as 'eing an open and vocal advocate for change of the UPL statutes in Oregon as Defendants, was kewise sued by the Oregon State Bar pursuant to ORS 9.160 et seq

169. Mr. Sapiro had never been instructed by the BOG to meet with an accused in a UPL case before being so instructed in this case.

170 All conduct of the UPL Committee and its members, and the Board of Governors wid its members, were within the scope and course of their authority of the Oregon State Bar.

171 No non-lawyer has ever filed a complaint of UPL with the Oregon State Bar against Defendants.

172 A significant number of people cannot afford legal services in this state and some of heir legal needs are not being met by the members of the Oregon State Bar.

173. The Oregon State Bar has acted in good faith in this case.

Based on the FINDINGS OF FACT, the Court enters the following CONCLUSIONS **)OF LAW:**

Defendants are unlawfully practicing law in violation of ORS 9.160.

2. These illegal acts and practices of Defendants, and each of them, are continuing and onstitute a present and serious risk of injury and hain, financial and otherwise, to the citizens of the State of Oregon.

3The Oregon State Bar asserted its claims against Ms. Smith and People's Paralegal Service, Inc. in a reasonable amount of time following knowledge of complaints against Defendants and Defendants have not been substantially prejudiced by any delay.

4. The Oregon State Bar is not barred from bringing this suit by the doctrine of laches or equitable estoppel.

5. The law's restrictions upon Defendants' business activities, to the extent they may affect Defendants' speech' are not broader than necessary to serve the intereit of the public, and an injunction prohibiting Defendants from engaging in the practice of law will not violate defendants' rights of free speech as guaranteed by the First Amendment of the United States Constitution or by Article I, Section 8 of the Oregon Constitution.

6. The definition of what constitutes the practice of law as provided by the Oregon Supreme Court is not vague and does not violate Defendants' right of due process of law under the Fourteenth Amendment to the United States Constitution or Article I, Section 10 of the Oregon Constitution.

7 An injunction will not violate Defendants' right to equal protection guaranteed by the Fourteenth Amendment to the United States Constitution or Article 1' Section 20 of the Oregon Constitution.

8. A decree and injunction should be issued to strictly enjoin Defendants, and each of them, directly or indirectly, or through any business, corporation or subsidiary or as a director, officer, employee, agent or otherwise, from practicing law.

9. Plaintiff should be awarded costs and disbursements including reasonable attorney's fees incurred herein.

DISCUSSION

Only a member of the Bar can bring knowledge of the law and legal advice to the aid of a lient While any person can act pro se, only a member of the Bar can represent another.

In the circumsance in which a person proceeds pro se the person alone brings knowledge of the law to bear. If the person has none, none can be gained from someone who is not a meember of the Bar. The person who proceeds pro se must "practice all the law", though they can uy and utilize forms. These forms can be legally sold. Defendants undertake to do so. However, while Defendants can legally offer and sell forms, the pro se must determine which forms are appropriate. Defendants violate the law by in making this determination.

Just as anyone can sell forms, anyone can legally type forms. But the typist cannot supply the words and phrases and sentences to be typed. Only a lawyer as the pro secan. Defendants violate the law by doing so.

People who know nothing about the law seek help and advice from Defendants. Defendants provide it. Doing so is illegal and will be enjoined.

Ms. Smith contends that her customers need her help. She may often be right, though she has done great harm to some of her customers. But customer need is not a defense to the statute. The legislature can change the statute if it agrees with Ms. Smith. So far it has not.

The Bar was lackadaisical in investigating and prosecuting suit against Defendants. 'Defendants argue that this unfortunate failure of the Bar to protect the public sooner deprives the Bar of its ability to do so now. Defendants are wrong: The Bar's faillure does not license Defendants.

Defendants also imply that the Bar is prosecuting them not fbr unlawful practice of law, but because of Ms. Smith's advocacy of allowing trained paralegals to deliver legal services directly to people who need their service. Part of the Bar's faiilure to act sooner may have included concern about how such a prosecution may be viewed. The Bar is now prosecutmg Defendants becuse people have suffered through Defendant's illegal practice of law.

Defendants correctly point out that the Bar failed to notify the Attorney General prior to commencing this suit. Failure to do so does not deprive this court of jurisdiction.

Defendants raise other issues. They do not merit discussion on and my writing on them would not enlighten or help appellate courts or others.

DATED this 24th day of May, 1995

s/_____
MICHAEL J. MCELLIGOTT
CIRCUIT COURT JUDGE

PETITION FOR WRIT OF CERTIORARI

Appendix E

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

OREGON STATE BAR, a public corporation, Plaintiff,	) No. C94-0597CV
ROBIN S. SMITH, and PEOPLE'S PARALEGAL SERVICE, INC., an Oregon Corporation Defendants.	) JUDGEMENT AND DECREE) PERMANENT) INJUNCTION

The above-entitled matter came before the Court for trial on April 20, April 21, April 26 and April 27, 1995 before the undersigned Judge. Plaintiff, Oregon State Bar, appeared through Jeffrey Sapiro and its attorney, Allen Reel, Special Counsel. Defendant Robin S. Smith appeared in person and on behalf of People's Paralegal Service, Inc., and with their attorney, Gary V. Abbott.

The attorneys made opening statements on behalf of their respective clients, introduced testimony and other evidence in support of their respective cases, and submitted closing arguments and proposed findings in writing. Thereafter, the Court made its Findings of Fact and Conclusions of Law in favor of plaintiff on May 24, 1995. Now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants,

and each of them, directly or indirectly, or through any business, corporation, or subsidiary, or as a director, officer, employee, agent, orotherwise be and hereby are strictly and permanently enjoined from practicing law including:

1. Enjoined from any personal contact with any persons in the nature of consultation, explanation, recommendation, or advice regarding their legal matters.

2. Enjoined from meeting with any persons to discuss their individual facts and circumstances relating to their need or desire for legal forms, legal services or legal assistance.

3. Enjoined from obtaining information orally, in writing, or in any other manner relating to individual facts and circumstances so as to assist any persons with their legal matters.

4. Enjoined from advising any persons regarding their eligibility for or advisability of legal remedies to address any person's particular legal matters.

5. Enjoined from advising any persons regarding procedural functions~of the court system as it relates to any person's particular legal matters including advice regarding jurisdiction or venue.

6. Enjoined from assisting in selecting particular forms, documents or pleadings for any persons to address their legal matters.

7. Enjoined from assisting in any way with the preparation or filling out of legal forms, or any parts of such forms,

d ocuments or pleadings for any persons.

8. Enjoined from assisting, suggesting or advising any persons how to forms, documents or pleadings should be used to address or to solve particular legal problems.

9. Nothing included in this Judgment and Decree precludes Defendant Smith from working for someone authorized to practice law so long as she is acting within the course of her duties and under the direction and supervision of an individual authorized to practice law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff is awarded judgment against defendants, and each of them, for its costs and disbursements and attorney's fees incurred herein, in an amount to be determined under ORCP 68C.

DATED this 14th day of June, 1995.

s/_____
Michael J. McElligott
Circuit Court Judge

Prepared and submitted by

s/_____
Allen Reel (OSB #74267) Special Counsel to Oregon State Bar

PETITION FOR WRIT OF CERTIORARI

Appendix F

IN THE SUPREME COURT OF THE
STATE OF OREGON

OREGON STATE BAR, a public Corporation, Respondent on Review	) Trial Court No. C94-0597CV
v.	)
ROBIN S. SMITH, and PEOPLE'S PARALEGAL SERVICE, INC. an Oregon Corporation, Petitioners on Review	) CA No. A89206

PETITION FOR REVIEW OF ROBIN S. SMITH and PEOPLE'S PARALEGAL SERVICE, INC

Petition for review of the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for the County of Washington, Honorable Michael J. Mc Elligott, Circuit Court Judge Opinion Filed, July 9, 1997.

Affirmed.
Author of Opinion: Haselton, Judge
Concurring Judges: Deits, Chief Judge, Richardson, Senior Judge

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COPY OF COURT OF APPEALS DECISION A-1

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PRAYER FOR REVIEW

Petitioners petition this Court to review the opinion of the Court of Appeal unanimously affirming the judgment of the Circuit Court upholding the constitutionality of ORS 9.160 and of the injunction against petitioners issued pursuant thereto. Petitioners pray this court reverse the decision of the court of appeals, declare ORS 9.160 unconstitutional insofar as it bans the historically free exchange of out-of-court legal advice between Oregon citizens, and Vacate the injunction of the Circuit Court.

QUESTIONS PRESENTED ON APPEAL

1. Whether ORS 9.160 violates Article I, section 8 (Art. I, sec. 8) of the Oregon State Constitution insofar as it prohibits nonlawyer citizens from the historically free exchange of legal advice and information with one another.

2. Whether the injunction decreed by the trial court is unconstitutionally overbroad in banning petitioners not only from statutorily unauthorized practice of law but also from all those forms of practice of law permitted by the state to all nonlawyer citizens of Oregon.

PROPOSED RULE OF LAW

Petitioner proposes, if review is allowed, that this Court recognize that personalized, out of court legal advice was freely exchanged by nonlawyer citizens in all states and in the Oregon Territory up to and well beyond the adoption of the Constitution of Oregon in 1859.

Petitioner proposes that this Court establish as a rule of law that such communication of legal advice between nonlawyer citizens is subject matter speech which is protected by Art. I, sec. 8 and cannot be prohibited absent constitutional amendment by the state of Oregon or its legislature.

REASONS FOR REVERSAL

1. The Court of Appeals erred in holding that the ORS 9.160 ban on nonlawyer citizens exchanging out of court legal advice does not violate the Constitutional protection of historically free speech provided by Art. I. sec. 8 of the Oregon Constitution. Legal advice is speech on a subject matter, protected from legislative prescription by Art. I, sec. 8 of the Oregon Constitution. The exchange of out of court legal advice was never regulated or prescribed prior to the adoption of the Oregon Constitution.

The terms of Oregon's unauthorized practice statute, ORS 9.160, ban out of court legal advice, regardless of its effects, whether good or bad, whether the advice is correct or incorrect. Therefore the statutory prohibition of such speech is unconstitutional and the Court of Appeals conclusion to the contrary should be reversed. State v. Stoneman 323 Or. 536, 920 P.2d 535 (1995); State v. Robertson 293 Or. 402, 649 P. 2d 569 (1982).

2. The Court of Appeals erred in finding constitutional the Circuit Court's injunction, which banned petitioners not only from engaging in unauthorized practice of law but also banned petitioners from engaging in those forms of law practice which all nonlawyers are expressly authorized or implicitly permitted to practice.

The injunction's inclusion within its ban those forms of law practice which the state authorizes nonlawyers to practice violates federal First Amendment guarantees in that there is no compelling interest in the state's banning petitioners from the practice of law which the state authorizes nonlawyers to practice. cf. Zauderer V. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471.S.Ct. 626, 629 (1985), United Transportation Union V. State Bar of Michigan 401 U.S. 576 (1971); Brotherhood of Railroad Trainmen V. Virginia 377 U.S. 1 (1964)

STATEMENT OF FACTS

The opinion of the Court of Appeals correctly states the facts of this case, with the sole exception that it fails to note that the Circuit Court injunction bans petitioners not only from the unauthorized practice of law, but from all practice of law, including the myriad forms of law practice which the state authorizes all nonlawyers to practice, e.g.. practice before justice courts, practice before state agencies, etc.

ARGUMENT

A. THE COURT OF APPEALS ERRED IN HOLDING ORS 9.160 CONSTITUTIONAL

The unauthorized practice of law statute, ORS 9.160 is an absolute ban on the free exchange of legal advice between nonlawyers in Oregon. Art. I, sec. 8, of the Oregon State Constitution prohibits the government, with few historical exceptions, from"... restricting the right to speak, write, or print freely on any subject whatever.. .1. ORS 9.160 is a governmental enactment that, on its face, absolutely prohibits the free exchange of certain subject matter speech. The speech prohibited by the statute was not proscribed historically, and the prohibition is therefore unconstitutional under any coherent reading of Art. I, sec. 8.

The Oregon Supreme Court has spoken clearly in State v. Spencer, 289 Or. 225, 611 P.2d 1147, 1148 (1980), State v. Robertson, 293 Or. 453, 649 P.2d 569, *576* (1982), and their

1 Article I, section 8 of the Oregon Constitution provides:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

progeny, that the words of Art. I, sec. 8, mean what they say, and that" ... [i}f a law concerning free speech on its face violates this prohibition, it is unconstitutional; ...." Spencer 611 P~ 2d at 1148. This well settled approach mandates two lines of inquiry which conclusively determine the governmental enactment at hand, ORS 9.160, is facially unconstitutional.

The first line of inquiry tests whether the unauthorized practice of law statute absolutely banning the free exchange of legal advice between nonlawyers is a governmental enactment that on its face restrains the free expression opinion" or restricts the "right to speak" on any subject whatever. Robertson, 293 Or. at 412, 649 P. 2d at 576 (quoting State v. Spencer 611 P.2d at ~ 299 Or. 691,695,705 P. 2d 740,743-44(1985). A governmental enactment restricts freedom of expression and the right to speak when it is directed at the act or subject of any communication rather than some defined injury. Spencer, 611 P. 2d at 1148; State v. Plowman, 314 Or. 157, 164, 838 P. 2d 558, 562 (1992). Governmental enactments within this category violate Art. I, sec. 8, unless the second line of inquiry indicates the restraint can be wholly confined within one of the few well established historic exceptions. State v. Blair, 287 Or. 519, 601 P. 2d 766, 768 (1979) (statute that in its own terms forbids speech is vulnerable to constitutional attack on its face).

Unquestionably, ORS 9.160, as interpreted by the Oregon Supreme Court, proscribes expression about any subject or the act of communication. The statute reads:

> Except for the right reserved to litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.
>
> ORS 9.160.
>
> The Oregon Supreme Court has defined the practice of law as: -_ [A]ny exercise of an

intelligent choice, or an informed discretion in advising another of his legal rights and duties, Oregon State Bar v. Security Escrows Inc. 377 P. 2d 334, 339 (1962); see also Oregon State Bar v. John H. Miller & Co. 385 P. 2d 181, 182 (1963); Oregon State Bar v. Gilchrist 538 P. 2d 913, 919 (1975); Oregon State Bar v. Write, 280 Or. 693, 573 P. 2d 283, 286 (1977).

The statute does not require the communication to cause any adverse consequence or effect on the listener. All it requires is that a nonmember of the bar communicate on the subject prohibited. Unless it can be wholly confined within some well excepted historic exception, ORS 9.160 violates Art. I, sec. 8.

As the opinion of the Court of Appeals clearly demonstrates in its review of the history of the regulation of law practice in Oregon (Opinion, pp.5-18), the free out of court exchange of legal advice between citizens was not subject to any governmental prohibition until long after the adoption of Art. I, sc. 8 of the Oregon Constitution. ("During territorial times and for the first 60 years of Oregon's statehood, restrictions on the practice of law were minimal.... The restrictions that were imposed pertained solely to litigation practice -- that is to qualifications to appear before courts and to sign pleadings. There were few, if any, restrictions on the restrictions of general out-of-court legal advice." (Opinion pp.5-6).

In Oregon, because communication on any subject is constitutionally privileged unless there is an historical exception, speech can only be regulated incidentally by laws which proscribe some real and objectively harmful effect likely to follow from certain words at the time and place they are uttered. City of Portland v. Tidyman, 306 Or. at 188, 759 P.2d at 249. ORS 9.160 is plainly a governmental restraint on speech that does not specify the harmful effect objectively likely to follow from the exchange of legal advice between nonlawyers. Whether or not particular

nonlawyer legal advice is correct and beneficial or is incorrect and harmtul, it is all banned without regard to effect.

As stated in Robertson historically free speech cannot be banned by the legislature simply because such speech is deemed undesirable or is thought to have adverse consequences. ORS 9.160 reflects nothing more than a generalized governmental apprehension of the free exchange of legal advice between nonlawyers and a complete ban regardless of effect on all such speech.

The Court of Appeals erroneously concludes that "ORS 9~ 160 is not "written in terms directed to the substance of any "opinion" or any subject of communication. " Opinion, p.20. The opinion further erroneously concludes that ORS 9.160" is expressly directed to limiting the conduct of a professional ...." Opinion, p.20. However, the only express direction of ORS 9.160 is that law not be practiced. The statute does not expressly use either the word "conduct" or the word "speech". It expressly bans "practice", and legal advice communicated from one person to another is the practice of law. That legal advice is speech, and that ORS 9.160 is written in terms that ban such speech between nonlawyers, is self evident. It can only be noted, not argued. While the Court of Appeals asserts that the practice of law is "conduct,"it nowhere gives any example of law practice that is conduct but not speech. The court refers to legal research and analysis as examples of "services" that are not speech. However, research and analysis are not the practice of law. When law students or even undergraduates research the law, they are not practicing law. It is only when the results of research or analysis are personalized and communicated through speech to another that law is being practiced. Whether the practice of law includes conduct that is not speech is doubtful; however such is not the issue. Out of court legal advice to another is both speech and the practice of law and being such it is expressly prohibited by the legislature and

expressly protected by Art. I, sec. 8. The dilemma cannot be escaped by calling speech conduct."

B. THE INJUNCTION AGAINST PETITIONERS IS UNCONSTITUTIONALLY OVEREROAD

Legal advice is fully protected speech under the First Amendment to the United States Constitution. As such it cannot be intruded upon absent a compelling government interest. Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio 471 5. Ct. 626 (1985); United Transportation Union State Bar of Michigan 401 U.S. 576 (1971); Brotherhood of Railroad Trainmen v. Virginia 377 U.S. 1(1964). The state of Oregon has approved myriad forms of law practice by nonlawyers, e.g. practice in justice of peace courts, ORS 52.060; practice in small claims court with consent of the court; before certain state agencies, etc. Given that the state, having approved such nonlawyer practice of law by any of its citizens, the state cannot demonstrate any compelling interest in enjoining petitioners from also engaging in such authorized nonlawyer law practice. By failing to limit the injunction to those forms of law practice which only licensed attorneys are permitted to practice, the injunction is unconstitutionally overboard in that its injunctive ban extends to protected speech with no compelling interest furthered by such extension.

REASONS FOR GRANTING REVIEW

1. The constitutionality of an important statute is presented by this case. (Rule 9.07 (1) (c))2. The constitutional challenge herein presents a question of state constitutional law rule 9.07 (4))

3. The constitutional challenge herein presents an issue which is one of first impression for this Court. rule 9.07 (5)). While a constitutional challenge to ORS 9.160 was presented in State Bar of Oregon v. Wright, 280 Or. 693, 573 p. 2d 283 (1977), the challenge was one of vagueness, not free speech, and was a challenge to prohibition of representation in the courtroom. It did not involve historically free speech such as the out of court legal advice at issue herein.

4. The facts of this case are simple and undisputed, presenting a clear and appropriate record for resolution of the issues presented. rule 9.07, (7)).

5. Many people are affected by the correctness, or lack thereof, of the decision of the Court of Appeals in this case. rule 9.07 (3)). There is a burgeoning independent paralegal movement in the United States, acting in response to the unmet needs of many citizens. As found by the Circuit Court in this case, substantial numbers of Oregon citizens cannot afford or otherwise obtain the services of an attorney when needed; some 9000 legal matters were brought to petitioners alone prior to being enjoined.

6. The interpretation of Art.I, sec. 8 as applied to ORS 9.160 is a significant issue presented by this case. rule 9.07 (a)). Further, the opinion of the Court of Appeals demonstrates the need for a clarifying interpretation of Art. I, section 8 as applied to historically protected out of court legal speech. The opinion of the Court of Appeals obviously found difficulty in applying this Court's Art. I, sec. 8 precedents to the case herein. The opinion finds these precedents an "awkward fit." Opinion, p.19. It notes that the analysis required by this court's precedents seem "somewhat ill-suited" in assessing the constitutionality of statutes such as ORS 9.160. Opinion, p.19. Further, the court of appeals indicates that this court's precedents "unfortunately" foreclose the ability to "carve out" a needed, or at least a "tempting" "fourth

category" for analysis in applying the protection of Art I., sec. 8 to a licensing statute such as ORS 9.160. Opinion, p.23. While petitioners assert the opinion of the Court of Appeals has misapplied these precedents, even if the opinion were free of error, it's discomfort with precedential requirements calls for review.

Any fair reading of the opinion of the Court of Appeals reveals the opinion's obvious strain in fitting the Art. I. sec.8 precedents of this Court to the ORS 9.160 challenge represented herein. Given the importance of the issue presented and the fact that this is a case of first impression, a clarifying opinion from this Court would provide a better resolution than an opinion which finds "awkward" fits and "unfortunate" limitations in ill-suited" precedents.

CONCLUSION

For the reasons set forth above, petitioners respectfully request this court to review thedecision of the court of appeals.

Respectfully
Submitted,

s/_____

Stuart A.
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Attorney for
Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Petition for Review upon the following individual, by mailing to said individual two true copies thereof; certified by me as such, contained in a sealed envelope, with postage prepaid, addressed to said individual at said individual's last known address, to-wit:

Allen Reel, Special Counsel
Oregon State Bar
P.O. Box 1609
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and deposited in the United States Post Office at Portland, Oregon on the 10th day of September,
1997

Stuart A Sugarman, OSB #92137
Attorney for Petitioners